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COURT OF COMMON PLEAS  
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DAVID POLEY  
CLERK OF COURTS  
MONTGOMERY CO., OHIO

STATE OF OHIO, MONTGOMERY COUNTY  
IN THE COURT OF COMMON PLEAS  
CIVIL DIVISION

06-8004

CHRISTOPHER LOCH  
ANGELA LOCH  
7633 Dayton Liberty Rd.  
Dayton, Ohio 45418

CIV. NO. \_\_\_\_\_

JUDGE \_\_\_\_\_

MAGISTRATE \_\_\_\_\_

Plaintiffs,

vs.

DELTA FUNDING CORPORATION  
C/O JACKIE MEEHAN  
1000 Woodbury Road  
Woodbury, New York 11797

and

AMERICAN TITLE SERVICES, INC.  
C/O RALPH A. ZUZOLO  
700 Youngstown- Warren Road  
Niles, Ohio 44446

COMPLAINT

Defendants.

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I. PRELIMINARY STATEMENT

1. Plaintiffs rescinded a loan within the three day rescission period guaranteed to

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Attorneys at Law  
P.O. BOX 280  
144 EAST MULBERRY STREET  
LEBANON Ohio 45036  
PHONE 932-1515



them by the Truth in Lending Act and Delta Funding Corporation failed to honor that rescission. American Title Services was negligent in not ensuring that Delta Funding Corporation rescinded the loan.

2. Plaintiff institutes this action for actual damages, statutory damages, rescission of the promissory note, termination of the mortgage which secures this note, attorney's fees, and the costs of this action against Defendant Delta Funding Corporation (hereinafter Delta) for a single violation of the Truth in Lending Act, 15 U.S.C. § 1601 et seq. (hereinafter TILA), and Federal Reserve Board Regulation Z, 12 C.F.R. § 226, (hereinafter Regulation Z), promulgated pursuant thereto, and for a declaration that TILA has been violated by Defendant Delta.
3. Plaintiff institutes an action for actual damages against Defendant American Title Services, Inc. for negligence.

## II. JURISDICTION / VENUE

4. The Jurisdiction of this Court for the First Cause of Action is invoked pursuant to the Truth in Lending Act, 15 U.S.C. § 1640(e).
5. The real property, which secures the loan, is located within Montgomery County, Ohio.
6. The actual loan closing occurred within Montgomery County, Ohio and the acts or omissions constituting negligence by American Title Services, Inc. occurred, or should have occurred in Montgomery County, Ohio.

## III. PARTIES

7. The Plaintiffs, Christopher Loch and Angela Loch, are natural persons currently residing at 7633 Dayton Liberty Road, Dayton, Montgomery County, Ohio 45418.
8. Defendant American Title, Inc., (hereinafter American), is an Ohio corporation, authorized to do business in Ohio with a principal place of business located at 7011 East Market, Howland, Ohio 44484.
9. At all times relevant hereto, Defendant Delta regularly extended or offered to extend consumer credit for which a finance charge is or may be imposed or which, by written agreement, is payable in more than four installments, and is the person to whom the transaction which is the subject of this action is initially payable, making Defendant Delta a creditor within the meaning of TILA, 15 U.S.C. § 1602 (f) and Regulation Z § 226 2(a) (17).

#### IV. FACTUAL ALLEGATIONS

11. On April 18, 2006, Plaintiffs executed a promissory note in the amount of \$114,000.00 in favor of Fidelity Mortgage, a division of Delta. This promissory note is attached to this Complaint as Exhibit A.
12. On April 18, 2006, Plaintiffs executed a mortgage, securing the promissory note described immediately above, in favor of Fidelity Mortgage, a division of Delta. This mortgage is attached to this Complaint as Exhibit B.
13. The purpose of this transaction was to refinance the Plaintiffs' residence and to consolidate debt. Attached to this Complaint as Exhibit C is the HUD Statement which details the payoff of two previously existing mortgages on the Plaintiff's residence and payoff of two other creditors.
14. The above-described transaction was a consumer credit transaction as described in TILA, 15 U.S.C. § 1602 and Regulation Z § 226.2.
15. Under these circumstances, Plaintiffs are guaranteed by TILA, 15 U.S.C. § 1635 (a), the unilateral right to rescind this transaction within three business days, for any reason whatsoever.
16. One day later, on April 19, 2006, Plaintiffs decided to rescind the transaction. On this day, Plaintiffs sent to Defendant Delta the rescission form they were provided at closing and a letter of explanation. The rescission form is attached to this Complaint as Exhibit D and the letter of explanation is attached as Exhibit E.
17. The rescission form and cancellation letter were sent by U.S. Postal Service Express Mail on April 20, 2006, to the address listed on the rescission form provided by Defendant Delta. Attached to this Complaint as Exhibit F is a true and accurate copy of the Express Mail receipt.
18. The rescission form and cancellation letter were received by Defendant Delta at 11:09 a.m. on April 21, 2006. Attached to the Complaint as Exhibit G is a confirmation of delivery statement from the U.S. Postal Service. Said delivery was within three business days and obligated Defendant Delta to rescind the loan.
19. Despite timely notice of Plaintiffs' intention to rescind this transaction, Defendant Delta disbursed loan proceeds on April 24, 2006.
20. Further, despite timely receipt by Defendant Delta of Plaintiffs' rescission form, Defendant Delta did not take any action, within twenty days, to return the settlement charges of \$12,559.21 to Plaintiffs, as required by TILA, 15 U.S.C. § 1635 (b).
21. Further, despite timely receipt by Defendant Delta of Plaintiffs' rescission form,

Defendant Delta failed to terminate the security interest created under this transaction, within twenty days, as required by TILA, 15 U.S.C. § 1635 (b) in an attempt to re-write TILA.

22. Further, seven weeks after receiving Plaintiffs' rescission documents, Defendant Delta has conditioned rescission upon the return, by Plaintiffs, of all funds disbursed, that amount being \$111,700.78, and payment by Plaintiffs of the settlement charges which would be associated with a new loan transaction, in the approximate amount of \$6,559.21. Defendant Delta has attempted to re-write TILA by making this demand.
23. Defendant American, acted as an agent of Defendant Delta by preparing the loan document and conducting the loan closing.
24. Shortly after Plaintiff express mailed the rescission form, he called Defendant American and advised it of the rescission.
25. Defendant American did nothing to ensure that the loan was rescinded. In fact, Defendant American told Plaintiff that the loan was not rescinded under these circumstances.

#### V. FIRST CAUSE OF ACTION-FAILURE TO HONOR NOTICE OF RESCISSION

26. Defendant Delta has violated the requirements of TILA and Regulation Z in the following and other respects:

- a) By failing to honor the timely served rescission form regarding the previously-described note and mortgage.

27. By reason of the aforesaid violation of TILA and Regulation Z, Defendant Delta is liable to Plaintiff in the amount of twice the finance charge, up to \$2,000.00, actual damages to be established at trial, and attorney fees and court costs in accordance with TILA, 15 U.S.C. § 1640.

#### VI. SECOND CAUSE OF ACTION- NEGLIGENCE

28. Defendant American was negligent in not ensuring that the rescission form caused an actual rescission of the instant loan.
29. As a direct and proximate result of Defendant American's negligence, Plaintiff has been damaged in the amount to be determined after discovery is completed.

#### VII. PRAYER FOR RELIEF

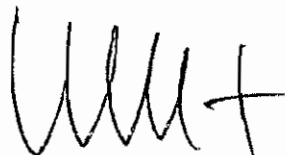
WHEREFORE, Plaintiffs respectfully pray that this Court:

1. Assume jurisdiction of this case; award actual damages, in excess

of \$15,000.00, to be established at trial pursuant to TILA, 15 U.S.C. § 1640(a)(1);

2. Award statutory damages in the amount of twice the finance charge not to exceed \$2,000.00 in accordance with TILA, 15 U.S.C. § 1640(a)(2).
3. Award Plaintiffs court costs and reasonable attorney fees in accordance with TILA, 15 U.S.C. § 1640(a)(3); and
4. Award actual damages, in excess of \$15,000.00, as a result of Defendant American's negligence; and award such other legal or equitable relief as the Court deems appropriate.

KAUFMAN & FLORENCE

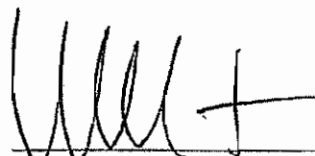


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PRAECIPE FOR SERVICE

TO THE CLERK:

Please serve Defendants at the addresses listed in the caption by certified mail



Wm. Robert Kaufman